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Case No. 96-5955

IN THE UNITED STATES SUPREME COURT

STEINEY RICHARDS,
Petitioner,

v.

STATE OF WISCONSIN,
Respondent.

On Writ Of Certiorari To
The Supreme Court of Wisconsin

BRIEF FOR AMICI STATES OF OHIO, ALABAMA, ALASKA, ARKANSAS, DELAWARE, FLORIDA, IDAHO, ILLINOIS, IOWA KANSAS, KENTUCKY, LOUISIANA, MARYLAND, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, VIRGINIA, TERRITORY OF GUAM, AND COMMONWEALTH OF PUERTO RICO IN SUPPORT OF RESPONDENT

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STATEMENT OF *AMICI* INTEREST

Amicus State of Ohio and 27 other *amici* States write to support their sister State, respondent Wisconsin, and to urge the Court to affirm the decision below.

Like Wisconsin, the *amici* States are responsible for overseeing enforcement of their criminal laws, including their laws prohibiting the sale and consumption of illegal drugs. In doing so, they are concerned not just with adherence to these laws, but also with protecting the law enforcement officers responsible for ferreting out violations and with ensuring that their citizens' privacy interests are respected in the course of this vital law enforcement work. The *amici* States wish to express their view as to how the text of the Fourth Amendment, the history behind its enactment, and the case law speak to the appropriate resolution of this matter.

SUMMARY OF ARGUMENT

The Fourth Amendment protects "the right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures." In measuring the reasonableness of a search, the Court first looks to history to determine whether a relevant tradition informs the content of the Amendment, then (if necessary) balances the law enforcement security interests presented against the individual liberty interests allegedly infringed. *See Wilson v. Arkansas*, _ U.S. _, 115 S.Ct. 1914 (1995).

1. History is informative (though not dispositive) in this instance. It shows that, while the knock-and-announce rule has deep roots in English and early American common law, the rule contained a host of exceptions. Among them were situations in which law enforcement officers faced peril or

risked the destruction of evidence if they honored the announcement rule. Still, history does not end the matter because the common law courts (to the State *amici's* knowledge) never addressed whether a blanket exception to the announcement rule ought to apply solely as a result of the nature of the arrest warrant or the nature of the evidence being sought. Accordingly, the *Wilson* framework applies. Just as compliance with the knock-and-announce rule is "among the factors" to be assessed in determining the reasonableness of a search, *Wilson*, 115 S.Ct. at 1918, so too here: law enforcement's adherence to a recognized exception to the rule counts in determining the reasonableness of a search.

2. Balancing the liberty and security interests implicated by felony-drug searches fills in the gaps of history. On the one hand, the safety of law enforcement officers and the preservation of evidence constitute quintessential security interests that the Fourth Amendment has long respected. The welfare of police officers is particularly acute in this setting: they are in unfamiliar territory, they are in a vulnerable position, and they are about to enter a dwelling in which there are not only illegal drugs but quite often guns. On the other hand, "the right of the people to be secure . . . in their houses" is one of our firmest and most cherished traditions. While that liberty interest diminishes when a search warrant has been granted (because entry ultimately cannot be denied), it does not disappear.

3. Measured against these considerations, the police officers' search in this case fully complied with the Fourth Amendment.

a. The officers knocked first and, before they had a chance to announce who they were, the inhabitants promptly shut the door. In view of this suspicious circumstance and

the fact that they were enforcing a search warrant for easily-disposed narcotics, the officers acted properly in thereafter breaking the door, searching the motel room and arresting petitioner.

b. The more difficult question is whether the proper result here -- non-compliance with the knock-and-announce rule -- invariably applies when officers enforce felony-drug search warrants. No common law precedent exists for such a sweeping exception. Nor does traditional balancing compel such a rule. For example, there may be situations in which the officers know for a fact that the occupants are not armed or that the drug supplies or drug paraphernalia may not be easily disposed. Under these circumstances, the security interests are *de minimis* while the liberty interests remain strong.

The only remaining explanation for adopting a blanket rule is the clarity it affords courts, officers and citizens alike. This is not insignificant. The Court has frequently embraced bright line rules in this area (and other areas of law enforcement) because certainty is a constitutional virtue in and of itself and because certain areas lend themselves to categorical balancing. While a bright-line rule would advantage law enforcement in this instance, that is not always true. Some bright-line decisions advance security interests, *see Maryland v. Wilson*, _ U.S. _, 1997 U.S. LEXIS 1271 (Feb. 19, 1997); others advance liberty interests, *see Mapp v. Ohio* 367 U.S. 643 (1961), *Miranda v. Arizona,* 384 U.S. 436 (1966).

At the end of the day, however, this simply is not a case that lends itself to a categorical rule. In this setting, it is too difficult to respect the value of bright line rules without slighting the Fourth Amendment's textual emphasis on reasonableness. At any rate, most cases in this area will

be susceptible to clear guidance. If the officers have objective evidence that their safety may be imperiled or the evidence jeopardized -- which frequently will be the case in a drug-felony search -- the Fourth Amendment permits them to abandon the formalities of the announcement rule.

ARGUMENT

I. THE FOURTH AMENDMENT PERMITS LAW ENFORCEMENT OFFICERS TO MAKE "NO KNOCK" ENTRIES IN EXECUTING A FELONY-DRUG SEARCH WARRANT WHEN THEIR SAFETY IS IMPERILED OR WHEN THE PRESERVATION OF EVIDENCE IS JEOPARDIZED.

The Fourth Amendment to the Constitution protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In assessing the reasonableness of a challenged search or seizure, the Court first looks "to the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing." *Wilson v. Arkansas*, 115 S.Ct. 1914 (1995). If a relevant tradition exists, one that suggests a meaning of the Fourth Amendment "ascribed to it by the Framers of the Amendment," *id.* at 1916, then the pre-ratification common law either may end the matter (if it speaks clearly to the situation at hand) or offer guidance as to what the guarantee means, see id. Otherwise, the "reasonableness" of a search turns "'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Pennsylvania v. Mimms*, 434

U.S. 106, 109 (1977) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

In this instance, history offers a partial answer, balancing a final one. What does history say? *Wilson v. Arkansas* makes clear that the common law generally required an announcement before executing a search or arrest warrant. 115 S.Ct. at 1916. The presence of such an announcement prior to an entry, *Wilson* thus concluded, "forms a part of the reasonableness inquiry under the Fourth Amendment." *Id.* at 1915. But "[t]his is not to say," Wilson was careful to point out, "that every entry must be preceded by an announcement." Id. at 1918. On the contrary, common law courts "recognize[d] that under certain circumstances the presumption in favor of announcement necessarily would give way to contrary considerations," *id.*, including "countervailing law enforcement interests," such as "a threat of physical violence" to the officers or the fear "that evidence would likely be destroyed if advance notice were given," *id.* at 1919 (citing *Ker v. California*, 374 U.S. 23, 40-41 (1963) (plurality opinion); *People v. Maddox*, 294 P.2d 6, 9 (Cal. 1956)).

All told, announcement was the general rule at common law, while peril to the officer and destruction of evidence established general exceptions to the rule. Still, history by no means establishes that law enforcement officers acting on a drug-felony search warrant categorically will have ample justification for abandoning the knock-and-announce requirement. These general exceptions just inform the inquiry. See *Wilson*, 115 S.Ct. at 1918 ("the method of an officer's entry into a dwelling" is "among the factors to be considered in assessing the reasonableness of a search or seizure"). Thus, just as compliance with the knock-and-announce principle is "among the factors" to be assessed in

balancing the reasonableness of a search, so too is adherence to a common law exception a relevant component of the balancing.

What does balancing say? On one side of the equation, peril to law enforcement officers and the potential destruction of evidence represent the classic types of security interests that the Fourth Amendment has long respected. And these security interests almost certainly will be present in most felony drug warrants. But, on the other side, there stands an important liberty interest -- "the right of the people to be secure in their . . . houses." While bright lines offer countless benefits to both sides of the Fourth Amendment balance, they do not always fit within the contextual rubric of the amendment. They do not do so here. Unlike *Pennsylvania v. Mimms* and *Maryland v. Wilson*, this is not a situation in which the liberty interest of the individual invariably bows to the security risks to the officer. Usually, that will be the case. It clearly is the case on this record. It just is not always so.

A. At Common Law The Courts Recognized Numerous Exceptions To The Knock-And-Announce Rule, Including Peril To The Officer And Destruction Of Evidence.

History confirms Wilson's observation that the common law knock-and-announce rule, like many rules, contained exceptions. Indeed, if today's courts balance liberty against security under the Fourth Amendment's touchstone of reasonableness, yesterday's courts did roughly the same thing in balancing the liberty consideration that "every man's home is his castle," Hansard, *Parliamentary History of England* (1813), vol. 15, column 1307 (quoting William Pitt, March 1763), against the security consideration

that "the king's keys unlock all doors," *Brooms Legal Maxims*, 281, 432 (10th ed. 1929), Horace L. Wilgus, *Arrest Without A Warrant*, 22 Mich. L. Rev. 541, 800 (1924).

One such reconciliation of these bookend considerations was the way in which courts enforced the knock-and-announce rule. While common law courts long respected this rule, they also recognized several important exceptions to it. For example, in *White & Wiltshire*, 81 Eng. Rep. 709, 710 (K.B. 1619), the court permitted the breaking of a door after the sheriff's bailiffs had been imprisoned while they attempted an earlier execution of the seizure. In *Pugh v. Griffith*, 112 Eng. Rep. 681, 686 (K.B. 1838), the court dispensed with the need for a knock and announce because there was nobody on whom a demand could be made. And in *Mahomed v. The Queen*, 13 Eng. Rep. 293, 296 (P.C. 1843), the court recognized peril to the officer as a legitimate justification for lack of announcement. See id. ("While he was firing pistols at them, were they to knock at the door and ask him to be pleased to open it for them."); Kemal A. Mericli, *The Apprehension of Peril Exception to the Knock and Announce Rule*, *16 Search & Seizure* L. Rep. 129 (1989). Nor was any announcement required when the sheriff pursued an escaped prisoner. *Allen v. Martin*, 10 Wend. 300, 304 (N.Y. 1833). *Wilgus*, 22 Mich. L. Rev. at 804. Thus, even the common law recognized that "necessity provides a legitimate exception" to the knock-and-announce principle. 2 William Hawkins, *Pleas of the Crown*, ch. 14, 136 (8th ed. 1824). See also *Miller v. United States*, 357 U.S. at 301, 309 (1958) (recognizing an exception when officers were justified in their belief that persons within the premises were in imminent peril of bodily harm).

Early American decisions also found necessity exceptions to the knock-and-announce rule in order to

reconcile the twin interests in liberty and security. *Read v. Case*, 4 Conn. 166, 170 (1822); Blakey, *The Rule Of Announcement And Unlawful Entry, Miller v. United States* and *Ker v. California*, 112 U. Pa. L. Rev. 499, 505-508 (1964). Indeed, as this Court noted in *Ker*, the early American courts took the English exceptions and expanded them. *Ker*, 374 U.S. at 54 (Brennan, J., dissenting). See *People v. Maddox*, 294 P. 2d 6 (Cal. 1956) (determining that compliance is not required if the officer's peril would have been increased or the arrest frustrated); Sonnenreich & Ebner, *No Knock and Nonsense, An Alleged Constitutional Problem*, 44 St. John's L. Rev. 626, 630 (1970). Indeed, as one commentator has observed, "[t]here are apparently no English decisions acknowledging the existence of an exception to the knock and announce rule based on the imminent or likely destruction of evidence. This exception is distinctly American." Jennifer M. Goddard, *Note: The Destruction Of Evidence Exception To The Knock And Announce Rule: A Call For Protection Of Fourth Amendment Rights*, 75 B.U. L. Rev. 449, 462 n.80 (1995). Finally, "[t]he common law principle gradually was applied to cases involving felonies, but at the same time the courts continued to recognize that under certain circumstances the presumption in favor of announcement necessarily would give way to contrary considerations." *Wilson*, 115 S. Ct. at 1918.

Continuity and change marked the common law evolution of the knock-and-announce rule in England and in this country. Generally speaking, the rule took hold in this country, as did exceptions to it. What changed over time was the nature of the exceptions as new forms of criminal activity required new responses. "Crime has changed, as have the means of law enforcement, and it would therefore be naive to assume that those actions a constable could take in an English or American village three centuries ago should necessarily govern what we, as a society, now regard as

proper." *Steagald v. United States*, 451 U.S. 204, 217 n.10 (1981). Today federal and state courts all agree that "exigency" covers more exceptions than it did in 1791 or 1868 because new crimes and new threats to police officers (not present in earlier times) created new exigencies. Annotation: *Sufficiency Of Showing Of Reasonable Belief Of Danger To Officers Or Others, Excusing Compliance With "Knock And Announce" Requirement - State Criminal Cases*, 17 A.L.R. 4th 301 (1996); Martin O. Mier, Annotation: *What Constitutes Violation of 18 U.S.C. §3109 Requiring Federal Officer To Give Notice Of His Authority And Purpose Prior To Breaking Open Door Or Window Or Other Part Of House To Execute Search Warrant*, 21 A.L.R. Fed. 820 (1996).

B. Reconciling Security And Liberty Interests In This Instance Authorizes An Exception To The Knock-And-Announce Rule And Customarily Will Do So In The Context Of Felony-Drug Search Warrants.

In accordance with the text of the Fourth Amendment, and its "flexible requirement of reasonableness," *Wilson*, 115 S.Ct. at 1918, and in accordance with the common law recognition of an evolving necessity exception to the knock-and-announce principle, it is appropriate to consider the security interests of law enforcement officers in conducting felony drug searches and the liberty interests of the citizenry in the privacy of their homes. Together, these factors demonstrate that an exception to the knock-and-announce principle is warranted in this case and almost invariably will be warranted in conducting such searches.

1. Law Enforcement Officers Face Serious Risks To Themselves And To The Destruction Of Evidence In Conducting Felony-Drug Searches.

Enforcing State narcotics laws is a perilous enterprise. "Statistics indicate that drug related violence is a growing contributor to police mortality. From 1977 to 1986, 6.5% or 57 of 875 slain officers died in situations involving drug crimes. In 1985, 7.6% of police murders were drug related, and in 1986, 10.6% of police murders involved drug matters." Donald B. Allegro, *Police Tactics, Drug Trafficking, and Gang Violence: Why The No-Knock Warrant Is An Idea Whose Time Has Come, 64 Notre Dame* L. Rev. 552, 558 n.32 (1989) (Statistics extracted from Federal Bureau of Investigation, Crime In The United States; Uniform Crime Reports 1977-1986). Recent statistics show that between 1985-1994, 53 of 708 slain officers died in drug related matters. Uniform Crime Reports, Law Enforcement Officers Killed and Assaulted 1994, at 31, 34.

Regrettably, statistics do not reveal the numbers of officers assaulted during the execution of warrants, let alone during the execution of warrants in drug cases. However, the sheer number of officer injuries, together with the high percentage of law enforcement work devoted to drug interdiction, confirms the dangers inherent in such work. In 1994 alone, 64,912 line-of-duty assaults were reported resulting in 23,194 injuries and 76 deaths. Uniform Crime Reports, 1994 at 3, 73. FBI statistics show that between 1990 and 1994, the number of police officers murdered in the line of duty increased by 15%. Uniform Crime Reports, 1994 at 3. And between 1985-1994, 708 officers were killed. Uniform Crime Reports, 1994 at 29.

Knock-and-announce drug searches pose unique dangers to the police. Narcotics traffickers frequently are well armed, Allegro, 64 Notre Dame L. Rev. at 560 n.49, as this Court has noted in discussing the high correlation between drugs and guns, *Michigan v. Summers*, 452 U.S. 692 (1981). "As common sense, and bitter experience, would suggest, the law has uniformly . . . recognized that substantial dealers in narcotics possess firearms and that such weapons are as much tools of the trade as more commonly recognized drug paraphernalia." *United States v. Payne*, 805 F.2d 1062, 1065 (D.C. Cir. 1986).

Drug houses also regularly are fortified with steel doors, barred windows and other obstacles to slow down entry of police officers armed with warrants. Allegro, 64 Notre Dame L. Rev. at 561. And drug houses may be equipped with sophisticated cameras and electronic surveillance devices. Allegro, 64 Notre Dame L. Rev. at 561 n.52. More importantly, police are at a distinct disadvantage when executing such a search warrant. When they announce their authority and purpose, they make themselves readily identifiable. The occupants generally may be able to see the officers or know that they are close to the door. On the other hand, the officers may not be able to see the occupants and certainly may not know if they intend to resist. An announcement may simply give the occupants the opportunity to arm themselves. Id. at 566. "Once police officers seeking to enter a drug traffickers' enclave have announced their identity and authority, they stand before the door blind and vulnerable." *United States v. Bonner*, 874 F.2d 822, 824 (D.C. Cir. 1989). This phenomenon is called the "fatal funnel": The suspect always knows where the officer will be, while the officer's only advantage -- the element of surprise -- disappears the moment an announcement is made. Allegro, 64 Notre Dame L. Rev. at 566.

Even after the officer enters the house, the advantage remains with the inhabitants. They know the interior of the house, and frequently will use their position to fire first. *Maryland v. Buie*, 494 U.S. 325, 333 (1990). By contrast, the "risk of harm to both the police and the occupants [of an area subject to a search] is minimized if the officers routinely exercise unquestioned command of the situation." *Summers*, 452 U.S. at 702-03.

Nor can there be any doubt about the risk of destruction of evidence in this setting. Illegal drugs readily lend themselves to immediate destruction. See *Ker*, 374 U.S. at 23. The cases are legion in which police officers have caught offenders attempting to flush narcotics down the toilet. See Angie Brunkow, *Police Arrest Mother, Girls In Crack Raid*, Omaha World-Herald, May 4, 1995, at 13SF (Mother and 14 year old daughter caught trying to swallow bags of crack); Loren Keller, *Drug Suspect, Loot Fall From Roof of House*, Omaha World-Herald, Aug. 9, 1996, at 24.

2. Individuals Have A Strong Liberty Interest In the Privacy Of Their Home, Though That Interest Is Diminished When A Felony Drug Search Or Arrest Warrant Has Been Issued.

At the same time, individuals no doubt have a strong interest in protecting the privacy of their home from unwarranted intrusions. In holding that "the reasonableness of a search of a dwelling may depend in part on whether law enforcement officers announced their presence and authority prior to entering," 115 S.Ct. at 1916, Wilson properly recognized the important common law and Fourth Amendment protections to be "secure" in one's home. Other

decisions from this Court are to the same effect. *Maryland v. Buie*, 494 U.S. 325 (1990).

Of course, the existence of a search warrant for drugs in one's home lessens that security interest. Once a warrant has been issued, the privacy interests diminish significantly because entry may not be denied to officers possessing a valid warrant. See. Sonnenreich and Ebner, 44 St. John's L. Rev. at 647. Announcement or not, entry ultimately will be obtained after a warrant has been obtained.

Still, adherence to the knock-and-announce rule plainly protects certain time-honored liberty interests. In addition to protecting the individual's privacy, it decreases the potential for violence by alerting the inhabitant that the officer is legitimately on the property and it prevents the destruction of property by giving the resident an opportunity to open the door voluntarily. These interests are not insignificant.

3. The Balancing Of Interests In This Case Clearly Weighs In Favor Of The State.

As applied to the facts of this case, the balancing of interests clearly tilts in the State's favor. The officers properly obtained a warrant to search petitioner's motel room for evidence of "the felonious crime of Possession with Intent to Deliver a Controlled Substance" in violation of State law. *State v. Richards*, 549 N.W. 2d 218, 220 (Wis. 1996). In doing so, they initially sought permission from the magistrate to obtain a no-knock warrant, which is to say they asked the magistrate to issue a warrant specifically authorizing their unannounced entry. Id. at 228 n.3 (Abrahamson, J., concurring) The magistrate denied their request. When the officers reached petitioner's motel room,

they knocked on the door (though they did not announce who they were). Id. The door opened and, before the officers had a chance to identify themselves, petitioner and at least one other individual shut the door. Under any conceivable test of necessity, the officers plainly complied with the Fourth Amendment in proceeding to break the door open and arrest petitioner. The highly suspicious response to their arrival, plus the immediate risk of destruction of evidence, more than sufficed to excuse compliance with any additional formalities.

4. While Peril To The Officer And The Risk Of Destruction Of Evidence Customarily Will Excuse Announcement In Executing Search Warrants For Drug Felonies, The Fourth Amendment Does Not Permit A Blanket Rule In This Area.

The harder question is whether the proper result here -- non-compliance with the announcement rule -- invariably applies when police officers execute felony-drug search warrants. The answer is a qualified no. Normally, the generalized peril to officers conducting such searches together with the risk of destruction of evidence will give them discretion to abandon the niceties of knocking and announcing their presence. But, because easily-imagined situations exist in which objective evidence will substantially (if not entirely) diminish these dangers, it is not appropriate to establish a categorical no-knock rule.

First, the common law does not support such a blanket exemption. Each of the traditional exceptions to the announcement rule involved discrete exigencies that made

compliance foolish or dangerous. See supra. None of the recognized exceptions to the rule at common law, in short, was as all encompassing as the test announced by the lower court.

Second, not all drug-felony searches present the compelling risks to officers and evidence that the lower court identified. It is not difficult to imagine settings in which officers have objective evidence establishing that compliance with the announcement rule neither imperils them nor jeopardizes the desired fruits of their search. For example, they may know for a fact that the residents are not armed or dangerous. Or they may know that the quantity of drugs, the types of drugs or the sorts of drug paraphernalia cannot readily be destroyed. Either way, a blanket rule for all drug-felony searches threatens to swallow the knock-and-announce rule and in the end disrespect the reasonableness touchstone of Fourth Amendment inquiries. Accordingly, while objective threats to police officer safety and prevention of the destruction of evidence will entitle the officers to exercise their discretion in determining whether to announce their arrival, the Fourth Amendment does not invariably give them that choice simply because drugs are involved.

Third, the only remaining justification for affirming a blanket rule in this area is the benefit of offering clear guidance. While this is an important consideration, it does not in the last analysis justify such a decision here.

As an initial matter, the Wisconsin's Supreme Court's decision to adopt a bright line rule is not a disqualifying factor. Even in the Fourth Amendment, the Court has recognized the utility of providing clear benchmarks to officers and citizens alike. In many cases, reasonableness balancing may be done categorically, thereby providing guidance to courts, officers and citizens alike. See *Maryland*

v. Wilson, 1997 U.S. LEXIS 1271 (Feb. 19, 1997) (officers may order occupants of automobile to exit upon stop); *Mimms*, 434 U.S. at 111 (officers may order driver of automobile to exit upon stop); *United States v. Robinson*, 414 U.S. 218 (1973) (officers may search person incident to a lawful arrest); *Michigan v. Summers*, 452 U.S. 692 (1981) (officers may detain occupant of premises while executing search warrant); *New York v. Belton*, 453 U.S. 454 (1981) (officers may search passenger compartment of automobile as search incident to arrest); *Colorado v. Bertine*, 479 U.S. 367 (1987) (inventory search of automobile). See also Wayne R. LaFave, *"Case-By-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1994 S. Ct. Rev. 127 (1974); Albert W. Alschuler, *Bright Line Fever And The Fourth Amendment*, 45 U. Pitt. L. Rev. 227 (1984).

Nor do bright-line rules necessarily favor security over liberty interests. Many of the Court's categorical rulings in this area, to be sure, err on the side of protecting law enforcement. See, *e.g.*, *Wilson*, 1997 U.S. LEXIS 1271; *Mimms*, 434 U.S. at 106. But many of the decisions in this area (and in the Fifth Amendment as well) err on the side of protecting the individual. See *Edwards v. Arizona*, 451 U.S. 477 (1981) (once suspect has invoked right to counsel, interrogation must cease until counsel made available or the suspect initiates further communication); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Mapp v. Ohio*, 367 U.S. 643 (1961).

Thus, just because bright line rules invariably overprotect one side of the Fourth Amendment equation at the expense of the other does not disqualify them. They remain an indispensable part of the Court's jurisprudence in this and other areas in view of the clarity of guidance they provide. "[A] single familiar standard is essential to guide police officers who have only limited time and expertise to

reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Colorado v. Bertine*, 479 U.S. at 375 (quoting *New York v. Belton*, 453 U.S. 454, 458 (1981)). Compare Stevens, *The Bill of Rights: A Century of Progress*, 59 U. Chi. L. Rev. 13 (1992) with Scalia, *The Rule of Law As A Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989).

In this instance, it could fairly be argued that the overprotection of security interests is simply the price of a system of clear precedents, a price that should be accepted in this case in view of the frequency with which this issue will arise in the future and the need for guidance from the Court. The price, however, is too steep here. The lack of a blanket exception at common law, the ultimate requirement of reasonableness balancing under the text of the Fourth Amendment, *Ohio v. Robinette*, 117 S. Ct. 417, 421 (1996), and the traditional privacy interests long associated with the home simply do not allow such a rule here.

Nonetheless, most cases in this area are susceptible to clear guidance. If the officers have objective evidence that their safety may be imperiled or the evidence jeopardized -- which normally will be the case in a drug-felony search -- the Fourth Amendment gives them the discretion to abandon the formalities of the announcement rule. Thus, even though police officers may not be entitled to the complete discretion that a blanket rule would give them, they still deserve great deference in making rapid, life-and-death judgments about how best to proceed in executing a felony-drug search warrant. See *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) ("the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments . . . in circumstances that are tense, uncertain, and rapidly evolving").

CONCLUSION

For the foregoing reasons, the amici States respectfully request the Court to affirm the decision below.

Respectfully submitted,

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